

STATE OF WASHINGTON



OFFICE OF  
INSURANCE COMMISSIONER

*In The Matter Of:*

PACIFICARE OF WASHINGTON, INC,

A Registered Health Care  
Services Contractor,

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No. D03-43

CONSENT ORDER  
LEVYING A FINE

To: PacifiCare of Washington, Inc.  
7525 SE 24<sup>th</sup> Street  
Mercer Island, WA 98040

*Comes Now the Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.02.080 and RCW 48.05.185, and having reviewed the official records and files of the Office of the Insurance Commissioner, makes the following:*

**FINDINGS OF FACT:**

1. PacifiCare of Washington, Inc. ("PacifiCare") is a health care services contractor registered to do business in the State of Washington.
2. The Office of the Insurance Commissioner (OIC) conducted a market conduct examination of PacifiCare covering the time period between January 1, 1996, and July 31, 2001.
3. The market conduct examination of PacifiCare was adopted by the Insurance Commissioner by Order Adopting Report of Market Conduct Examination No. G-02-30, entered September 26, 2002, which order is final.
4. RCW 48.05.190 makes it unlawful to hold oneself out as a Health Maintenance Organization as defined in RCW 48.46.020 without being duly registered therefore with the commissioner. PacifiCare distributed a brochure to employees of King County identifying PacifiCare as a health maintenance organization. PacifiCare's registration at the time the brochures were distributed was as a health care service contractor.
5. RCW 48.17.160(1) requires carriers to file written notice of agent appointments with the commissioner and pay the filing fee as provided in RCW 48.14.010, and RCW 48.44.011(2) makes it unlawful to act as an agent for a health care services contractor unless licensed as a disability insurance agent in the state. Of 382 PacifiCare agents reviewed, 53 nonresident

agents had no appointment, 30 nonresident agents had neither an appointment nor a license, 114 resident agents had no appointment, and 37 resident agents had no appointment or license.

6. Pursuant to RCW 48.42.100(5)(a), WAC 284-43-250 and former WAC 284-43-100, health care plans must provide women patients with direct access to the type of health care practitioner of their choice for appropriate covered women's health care without requiring a referral from a primary care physician or another type of health care practitioner and must not deny coverage for medically appropriate services, including prescriptions, which are ordered by a directly accessed women's health care practitioner. PacifiCare issued twenty plan forms requiring women to obtain preauthorization from a primary care physician prior to seeking treatment from a women's health care practitioner, one form providing that hormone replacement therapy could only be obtained from a primary care physician, seventeen contracts and endorsements providing that a member could directly access only those women's healthcare providers within their primary care physician's network, and three contracts providing that the member must use the facilities and ancillary services of their primary care provider.
7. Pursuant to WAC 284-43-230(4) and former WAC 284-43-100(4), carriers must explain to enrollees a woman's right to directly access women's health care practitioners for covered women's health care services. PacifiCare failed to include an explanation of a woman's right to direct access to women's health care practitioners in two of its contracts.
8. WAC 284-30-650 requires health care services contractors to respond promptly to OIC inquiries and provides that a lack of response within fifteen days will be considered untimely. Of seventy-seven compliant files reviewed, seventeen had responses to OIC inquiries dated more than fifteen days after the inquiry was received by PacifiCare.
9. RCW 48.44.342 requires that a health care service contractor waive preauthorization from the contractor before a covered person receives mental health treatment from a state hospital if the covered person is involuntarily committed to the hospital. Of one hundred twenty-two contracts and endorsements reviewed, twenty-seven did not provided that preauthorization is waived for state hospital mental health treatment following involuntary commitment.
10. WAC 284-44-030(1) requires that the text in health care service contracts be printed in uniform type size and WAC 284-44-030(3) requires that each form be identified by the form number located on the lower left hand corner of its first page. PacifiCare used 15 forms that included a disclaimer text box in type smaller than the other text in the form and on 40 forms the form number was either missing, located on the back page, or in the lower right corner, the number differed from the filed number, or the form contained multiple form numbers.
11. RCW 48.44.070 requires that the forms of the contracts between health care services contractors and participating providers must be filed with the commissioner prior to use. Of forty-six provider contracts reviewed, ten were not filed prior to use.

12. RCW 48.44.040 and WAC 284-43-920 require that a health care services contractor shall not change any rates, modify any contract, or issue any new contract without first filing a copy of the changed rate schedule, modified contract, or new contract with the commissioner. Of the quote files requested by the examiners for review, PacifiCare could not produce sixty-nine files and rate calculation worksheets documenting the factors used to calculate rates were missing from many of the underwriting files. Of three hundred thirty-six files reviewed, sixty-two employed rates or forms which had not been filed with the commissioner.
13. WAC 284-43-320 requires health care services contractors' provider contracts to contain provider hold harmless agreements. Of forty-six PacifiCare provider contracts reviewed, seven failed to contain provider hold harmless agreements.
14. 2RCW 48.43.005(11) and WAC 284-43-130(6) define "emergency medical condition" to mean otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department." Of forty-six PacifiCare provider contracts reviewed, the definition of "emergency medical condition" in five contracts differed from the statutory definition.
15. RCW 48.43.093 requires a health care services contractor to cover without prior authorization emergency medical services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. One PacifiCare handbook and two contracts directed members to the call the carrier and wait for a return call in an emergency situation.
16. WAC 284-50-200 requires a carrier to maintain at its home or principal office a complete file of the carrier's published advertisements. Twenty-five items were missing from PacifiCare's advertising file when initially reviewed, although the missing items were subsequently located and provided by PacifiCare.
17. RCW 48.44.330 mandates coverage for reconstructive breast surgery resulting from mastectomy and requires the contract to include coverage for reconstructive reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. Eight summary pages and two contracts did not state in the cosmetic surgery exclusion that reconstructive breast surgery on the nondiseased breast is covered after mastectomy.
18. RCW 48.44.210 mandates that group health care service plan contracts covering dependent children under a certain age shall provide for continued coverage of a child with a developmental disability or physical handicap after the child has attained the limiting age if the child remains disabled as defined in the statute. PacifiCare issued eight contracts providing continued coverage for children disabled due to "mental retardation" but not those disabled by other developmental disabilities.
19. RCW 48.43.115 3(a) and (b) provide that the length of a mother's post delivery inpatient stay is to be determined by the mother and attending provider based upon accepted medical practice rather than carrier contract limitations and that coverage of eligible post delivery

inpatient services shall not be denied for services ordered by the attending provider in consultation with the mother. Examiners found three conversion contracts and one endorsement with blanket exclusions for hospital charges for newborn well-baby nursery care in excess of three days for a normal birth and five days for a cesarean section.

20. RCW 48.44.212 requires that health care service plans covering dependent children automatically cover newborns and that notification to the carrier need not be provided prior to sixty days from the child's birth and only if payment of additional premium is required. Eight PacifiCare contracts required enrollment of newborn children without noting any exception.
21. RCW 48.44.420 requires that health care services contract covering dependent children also cover adoptive children on the same basis as other dependents and that notification of placement for adoption may be required if the contract requires an additional premium to provide coverage for a child. Four PacifiCare contracts required enrollment of adopted children.
22. WAC 284-44-040(7) prohibits health care service contract provisions that unreasonably restrict or delay payment of benefits. Three PacifiCare contracts contained provisions excluding "any services the member receives while not covered by the Plan, or for which no charge is made, or for which a charge is made", which provisions, if applied literally, would exclude all services for which a charge is made and unreasonably restrict and delay payment of benefits.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

## **CONCLUSIONS OF LAW**

1. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license.
2. PacifiCare committed the following violations of Washington law:
  - a. The Company's identification of itself as a Health Maintenance Organization after its HMO authorization expired violated RCW 48.05.190;
  - b. The Company's failure to file notice of agent appointments and failure to pay the filing fees for such appointments violated RCW 48.17.160 and RCW 48.14.010;
  - c. The Company's use of forms with blanket primary care provider referral requirements, restricting coverage of hormone replacement therapy to therapy provided by an enrollee's primary care provider, and restricting access to women's healthcare providers within the enrollee's primary care physician's network violated RCW 48.42.100, WAC 284-43-250 and former WAC 284-43-100;

- d. The Company's failure to include in two contracts an explanation of a woman's right to directly access women's health care practitioners without a referral violated WAC 284-43-230 and former WAC 284-43-100;
- e. The Company's failures to respond promptly to OIC inquiries violated WAC 284030-650 and constituted an unfair practice under RCW 48.30.010;
- f. The Company's issuance of contracts and endorsements requiring preauthorization without providing that preauthorization is waived for state hospital mental health treatment following involuntary commitment violated RCW 48.44.342;
- g. The Company's use of type smaller than the type used in the remaining text in a disclaimer box on fifteen forms violated WAC 284-44-030(1);
- h. The Company's use of forms where the form number was missing or located on the back page or lower right corner and its use of forms containing multiple form numbers or form numbers different than the filed number violated WAC 284-44-030(3);
- i. The Company's use of rates and forms that had not been filed with the commissioner prior to use violated RCW 48.44.040 and WAC 284-43-920;
- j. The Company's failure to include hold harmless agreements in seven provider contracts violated WAC 284-43-320;
- k. The Company's use of a definition of "emergency medical condition" different than the statutory definition violated RCW 48.43.005 and WAC 284-43-130;
- l. The Company's issuance of contracts and a handbook requiring enrollees to obtain preauthorization of emergency care violated RCW 48.43.093;
- m. The Company's failure to keep a complete file of its published advertisements at its home office violated WAC 284-50-200;
- n. The Company's failure to except reconstructive breast surgery on the nondiseased breast following mastectomy from its cosmetic surgery exclusions in eight summary pages and two contracts violated RCW 48.44.330;
- o. The Company's issuance of eight contracts providing continued coverage for children past the normal limiting age for dependent children for children disabled due to "mental retardation" but not for children disabled by other mental developmental disabilities violated RCW 48.44.210;
- p. The Company's issuance of three conversion contracts and one endorsement excluding coverage for hospital charges for newborn well-baby nursery care in excess of three days for a normal birth and five days for a cesarean section violated RCW 48.43.115(3)(a) and (b);

- q. The Company's issuance of eight contracts requiring enrollment of newborn children without any exception violated RCW 48.44.212;
- r. The Company's issuance of four contracts that required enrollment of adopted children violated RCW 48.44.420.
- s. The Company's issuance of three contracts purporting to exclude coverage of any services the member receives for which a charge is made violates WAC 284-44-040(7).

## **CONSENT TO ORDER**

NOW, THEREFORE, PacifiCare consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of PacifiCare's payment of a fine and such other terms and conditions as are set forth below:

1. PacifiCare admits to the foregoing Findings of Fact and Conclusions of Law, consents to the entry of this Order, and waives further administrative or judicial challenge to the OIC's actions related to the subject matter of the Order;
2. Within thirty days of the entry of this Order PacifiCare agrees to pay to the OIC a fine in the amount of \$60,000, of which \$30,000 is suspended for a period of thirty months on condition that PacifiCare shall not violate the provisions of the Washington State Insurance Code or Washington Administrative Code which are the subject of this Order;
3. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of the Company's registration and authority and for the recovery of the full fine, including the suspended portion; and
4. PacifiCare understands and agrees that OIC intends to conduct a follow up market conduct target examination within twenty four months of the date of entry of this Order, that failure on the part of PacifiCare to comply with the statutes and regulations which are the subject of this Order during the thirty month period following entry of this Order and any finding of such failure by OIC examiners as a result of the intended market conduct target examination shall constitute automatic grounds for the revocation of the suspended portion of the fine and for recovery of the suspended portion of the fine, that any such finding by OIC of noncompliance by PacifiCare shall be final and nonappealable, and that PacifiCare will not contest such a finding by OIC or collection of the suspended portion of this fine in the event such a finding is made.

EXECUTED this 17<sup>th</sup> day of March, 2003.

PACIFICARE OF WASHINGTON, INC.

By: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Typed Corporate Title: \_\_\_\_\_

**ORDER OF THE INSURANCE COMMISSIONER**

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. PacifiCare of Washington, Inc. is ordered to pay a fine in the amount of \$60,000 of which amount the sum of \$30,000 is suspended upon the condition that the Company fully comply with the laws and regulations of the State of Washington which are the subject of this Order for the next thirty months;
2. The Company's failure to pay the fine within the time limit set forth above shall result in the revocation of the Company's registration and authority to conduct business in the state as a health care services contractor and in the recovery of both the suspended and unsuspended amounts of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this 26<sup>th</sup> day of March, 2003.

MIKE KREIDLER,  
Insurance Commissioner

By: \_\_\_\_\_  
Charles D. Brown  
Staff Attorney  
Legal Affairs Division